

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's Space)	
Station Licensing Rules and Policies)	IB Docket No. 02-34
)	
2000 Biennial Regulatory Review --)	
Streamlining and Other Revisions of)	IB Docket No. 00-248
Part 25 of the Commission's Rules)	
Governing the Licensing of, and)	
Spectrum Usage by, Satellite Network)	
Earth Stations and Space Stations)	

COMMENTS OF SES AMERICOM, INC.

SES AMERICOM, Inc. ("SES AMERICOM"), by its attorneys, hereby files its comments in response to the Notice of Proposed Rulemaking and First Report and Order (the "*NPRM*") issued by the Commission in the above-captioned proceeding.

In the *NPRM*, the Commission seeks to expedite the satellite licensing process, either by adopting a "first-come, first-served" approach, or by reforming and streamlining its current processing round procedures. SES AMERICOM supports many of the Commission's proposals for reforming and streamlining its processing round procedures, but believes that the Commission's first-come, first-served proposal would harm the public interest by decreasing competition among satellite operators and causing less efficient uses of scarce spectrum. SES AMERICOM therefore urges the Commission not to adopt its first-come, first-served proposal but rather to improve the processing round procedures.

I. Introduction

SES AMERICOM is a leading provider of satellite telecommunications services in the United States. Headquartered in Princeton, New Jersey, SES AMERICOM provides U.S. and international services through a fleet of 16 geosynchronous communications satellites. For most of its 25 years of operation (first as RCA American Communications, Inc., then as GE

American Communications, Inc.), SES AMERICOM has provided service to broadcast and cable television programmers, as well as to the federal government and others. The company also has a long history of providing communications for the telephone industry, and, more recently, SES AMERICOM's satellites have been used for data communications, VSAT services, and Internet transmissions. SES AMERICOM's parent company, SES GLOBAL, also owns SES ASTRA, a leading European satellite provider.

As noted by the Commission, the “satellite industry is a crucial component of the global communications marketplace,”¹ and “[t]he success of the U.S. satellite industry is due, at least in part, to the Commission’s current satellite licensing process.”² While the processing round procedures have led, in the past, to some licensing delays, the use of the processing round procedures has ultimately allowed for the development of a successful and competitive satellite marketplace. As detailed in comments being filed in this proceeding today by the Satellite Industry Association (the “SIA Comments”), many of the Commission’s proposals for reforming and streamlining the process would ameliorate licensing delays associated with the current processing round procedures. Other proposals contained in the SIA Comments would further reduce delay and speed the licensing process.

SES AMERICOM actively participated in developing the SIA Comments and fully supports the recommendations made in those Comments for improvement of the Commission’s current licensing procedures. SES AMERICOM notes that the SIA Comments have the support of all of SIA’s members,³ a fact that should give them substantial weight in the Commission’s consideration.

¹ *NPRM* at ¶ 2.

² *Id.* at ¶ 3.

³ Teledesic Corporation and ICO Global Communications did not participate in the drafting of the SIA Comments. *See* SIA Comments at note 1.

SES AMERICOM is filing these separate comments to explain further its opposition to adoption of a first-come, first-served satellite licensing procedure, and to make additional suggestions on streamlining the technical information requirements.

II. A First-Come, First-Served Procedure Would Discourage Competition.

In the *NPRM*, the Commission seeks comment on the “extent to which the first-come, first-served option encourages or discourages competition among satellite operators.”⁴

The use of a first-come, first-served option would discourage competition by increasing incentives for the filing of speculative applications, which would prevent or delay the provision of services by serious applicants.

The Commission itself acknowledges that a first-come, first-served licensing procedure might encourage the filing of speculative satellite applications.⁵ If a speculative application is filed as a lead application, the result will be a waste of Commission resources in processing an application for a satellite that may never be built, and a substantial delay in the provision of services to the public. Such delay would result from the next application in the queue not being processed until after the lead applicant has lost its license, which because of the various routes for appeal could take years.

Additionally, serious applicants would be discouraged from filing competing applications because the lead application would have priority, and it could be years before the orbital location might actually be available to a serious applicant. Moreover, if there were a significant passage of time between the award of a license to the lead applicant and the Commission’s revocation of that license and its reassignment to the next applicant in the queue, it could be impossible for the new licensee to build and launch a satellite prior to expiration of the U.S. ITU priority at the orbital position for which the initial license was issued. The result of

⁴ *Id.* at ¶ 41.

⁵ *See id.* at ¶¶ 51-54.

the delay would be the very damaging potential loss of U.S. priority at that orbital position. The loss of priority would adversely affect the public interest, as well as the commercial interests of U.S. operators.

Although the use of processing rounds has sometimes encouraged the filing of speculative applications, the speculation problem would be exacerbated in the first-come, first-served context by the fact that each applicant essentially would have blocking rights as against all other subsequent applicants in the queue. A speculative applicant in a processing round does not enjoy any such special priority.

The speculation problem would be exacerbated by the fact that an applicant could be required to participate in multiple queues in order to obtain all of the authority that it needs for a particular proposed system. Thus, even serious applicants might be tempted to file blocking applications in queues that were collateral to their key commercial interests.

In addition, the use of a first-come, first-served procedure would encourage the establishment of “paper” satellite companies. The strategy of such paper satellite companies would be to tie up as many orbital slots as possible, and to use the company’s priority to extract profits from serious participants in the satellite industry. It would be difficult, if not impossible, for the Commission to police this problem.

The Commission has proposed addressing the speculation problem by limiting the number of pending applications per entity to five, and by prohibiting applicants from allowing other entities to assume the applicant’s place in the queue.⁶ However, these solutions would not adequately address the speculation problem. Limiting the number of pending applications would have no impact upon the paper satellite companies, because the potential number of such companies is essentially unlimited. Moreover, even one speculative application filed for key orbital or spectrum rights could have serious adverse effects on competition.

⁶ *Id.* at ¶¶ 51, 53.

With respect to the proposed prohibition on allowing other entities to assume an applicant's place in a queue, the Commission has proposed -- to prevent circumvention of this prohibition -- treating mergers or other transfers of control as major amendments that would cause pending applications to be considered as newly filed.⁷ However, this treatment would hinder the ability of satellite companies to engage in legitimate business transactions. Contrary to the Commission's assumption, the loss of priority for a pending satellite application likely would deter a significant number of legitimate business transactions. Because pending applications can be critical to a satellite company's business plans and its financial well-being, the potential loss of priority for such applications could well prevent such a company from engaging in many transactions that would otherwise be in the public interest.⁸

Furthermore, preventing speculation would be particularly difficult if the anti-trafficking rule is eliminated, as suggested by the Commission.⁹ The incentives for filing speculative applications are greatly increased if licensees are allowed to buy and sell bare licenses.

III. First-Come, First-Served Would Result in Less Efficient Uses of Spectrum.

The use of a first-come, first-served procedure would decrease incentives for participation in allocation and service rule proceedings, thereby diminishing the Commission's ability to adopt service rules and allocations that will best serve the public interest. Moreover,

⁷ *Id.* at ¶ 53.

⁸ Many satellite companies, including SES AMERICOM, have been involved in merger/transfer of control transactions that the Commission has found to be in the public interest. *See Application of General Electric Capital Corporation, Transferors, and SES Global, S.A., Transferees*, 16 FCC Rcd 17575 (2001); *Hughes Communications, Inc. and Anselmo Group Voting Trust/PanAmSat Licensee Corp.*, 12 FCC Rcd 7534 (1997). At the time of these merger transactions, the satellite companies involved had pending applications with the Commission.

⁹ *NPRM* at ¶ 109.

first-come, first-served would eliminate incentives for efficient uses of spectrum by decreasing lead applicants' incentives for compromise and coordination with competing operators.

A. First-Come, First-Served Would Adversely Distort Service Rulemaking and Spectrum Allocation Proceedings.

Using a first-come, first-served licensing scheme would distort incentives for participating in allocation and service rulemaking proceedings. If the Commission were to use queues, serious applicants that are further back in the queue would have diminished incentives for participating in allocation and/or rulemaking proceedings. On the other hand, when processing rounds are used, all serious applicants have equally strong incentives to participate fully in these proceedings.

Full participation by serious applicants provides the Commission with more information, and thus should lead to adoption of rules that will better serve the public interest. Without such participation, moreover, a particularly acute problem would likely arise when the United States needs to seek international agreement on spectrum use matters at World Radio Conferences ("WRCs"). The United States has been successful in the past at WRCs because it has been supported by a broad coalition of U.S. industry that stands to benefit from the decisions made at a WRC. Such a coalition would presumably not exist if only the first applicant were able to take advantage of the allocation. It is unlikely that other members of the U.S. industry would be willing to devote time and money to international conferences if there were not a reasonable likelihood that they would benefit from the outcome.

First-come, first-served also likely would distort the positions taken by the parties participating in allocation and rulemaking proceedings. For example, a lead applicant participating in an allocation proceeding would claim that adequate spectrum is available for just one applicant, while the next applicant in the queue likely would argue that only two applicants could be accommodated. Applicants other than the lead applicant would all have an incentive to

argue for service rules that would disrupt the business plan of the lead applicant, to encourage such applicant to drop out of the queue.

B. First-Come, First-Served Would Eliminate Incentives for Efficient Use of Spectrum.

Processing rounds provide applicants with incentives to compromise, and to coordinate operation with other systems when it is technically feasible to do so. Thus, for example, if there are five applicants and, through negotiation and compromise among the operators, all can be accommodated with commercially reasonable changes to their systems, a processing round system would encourage the development of rules that would accommodate all five systems. However, a first-come, first-served procedure would encourage the lead applicant to claim that its system could not be modified in order to block the ability to license the other systems. It would be very difficult and time-consuming for the Commission to determine whether such a claim were true. Thus, a first-come, first-served procedure likely would result in less than all five systems being licensed, a result that would clearly be contrary to the public interest.

IV. A First-Come, First-Served Procedure Would Not Speed Up the Licensing Process in Many Cases.

In the *NPRM*, the Commission indicated that the key rationale for adoption of a first-come, first-served procedure is to reduce delay in the satellite licensing process.¹⁰ The current system is not as broken as the Commission would make it seem.¹¹ The proposals contained in the *SIA Comments*, if adopted by the Commission, would streamline processing rounds, eliminating some of the basis for Commission concern. More importantly, it is not clear that using a first-come, first-served procedure would actually reduce delay in general. In fact, it

¹⁰ See *id.* at ¶¶ 22-23.

¹¹ The fact is that, as reflected in the *SIA Comments*, the world's largest satellite operators and most of the major manufacturers support improving, not discarding, the current system of processing rounds. The Commission should give great weight to this consensus opinion.

is very possible that using first-come, first-served might actually result in a delay in the provision of services to the public.

The Commission's proposed first-come, first-served procedure contemplates the use of separate queues for service links, feeder-links and intersatellite-links.¹² As a result, an applicant would either not be able to launch and operate its system until its entire system were licensed, or it would be forced to make concessions on spacecraft design that could have a substantial adverse impact on the applicant's business plans. If an applicant were not the lead applicant in all of the relevant queues, it might be licensed for only part of its system. Issuing such a license would not decrease the overall delay in the implementation of the system associated with the licensing process, because the licensee would not be able to proceed with its system until it was awarded all requested elements resulting in a complete license. Moreover, because the Commission would not be able to process the remaining parts of an application (the lead applicant as to one element might well not be the lead applicant in other relevant queues), the first-come, first-served procedure might actually increase the delay associated with receiving a *complete* license from the Commission.

Moreover, service to the public would be delayed as a result of the first-come, first-served system if a lead applicant granted a license did not actually deploy its system. In such a case, the Commission could only process the next application in the queue after a likely delay of several years. The delay would include time for: (i) processing and granting the lead application (which presumably would be opposed by all other applicants in the queue); (ii) waiting for the lead applicant to miss a milestone; (iii) issuing an order canceling the license; and (iv) in most cases, resolving appeals of such cancellation within the Commission and possibly within the federal courts.

¹² See *id.* at ¶¶ 38-39.

Additional delay is likely because the adoption of the first-come, first-served approach would result in a rapid influx of applications.¹³ The FCC's ability to deal with such a backlog is doubtful, because of the complexity of satellite applications and the need to deal with multiple queues.

V. The Commission Should Further Streamline the Technical Information Requirements.

The Commission has proposed revising its requirements for technical information to be filed by applicants.¹⁴ SES AMERICOM fully supports the Commission's goal of standardizing and clarifying the technical information requirements. SES AMERICOM urges the Commission to adopt the proposals in the SIA Comments regarding these requirements.

SES AMERICOM believes that the Commission can take additional steps with respect to polarization. The Commission's rules in this area are outdated and overly restrictive. While broadcasters continue to need analog transmissions, the Commission's rules requiring linear polarization for C-band satellites make sense. But these same rules are not required for Ku/Ka-band satellites. In these bands, operators should be free to use any type of polarization that is best suited to the proposed service, subject always to the need to coordinate with neighboring satellites. Thus, SES AMERICOM suggests aligning the last sentence in clause (e) of 47 CFR § 25.210 to clause (d) by replacing the words "both horizontal and vertical polarization" with "orthogonal polarizations with the same beam and/or through the use of spatially independent beams." Other orthogonal frequency reuse techniques are simpler to implement in the Ku-band frequency given that the transponder bandwidths and center

¹³ This was the reaction to the adoption of first-come, first-served in the radio sector. *See NPRM* at n.34.

¹⁴ *Id.* at ¶¶ 84-97.

frequencies are not pre-assigned in that band.¹⁵ In addition, SES AMERICOM does not believe that the Commission needs to collect information, except with respect to C-band satellites, on polarization isolation, polarization switching or alignments of polarization vectors to the equatorial plane.¹⁶

VI. Conclusion

The Commission has recognized that processing rounds “insure that all mutually exclusive applications are processed fairly and that authorizations are granted equitably.”¹⁷ A first-come, first-served procedure would sacrifice fairness in the name of highly questionable administrative expediency. Thus, for the reasons stated above, the Commission should adopt the proposals outlined in the SIA Comments to improve the processing rounds and streamline other licensing procedures, and should not adopt a first-come, first-served satellite licensing procedure.

Respectfully submitted,

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¹⁵ The modification proposed to 47 CFR § 25.210(e) does not remove the linear polarization requirement for C-band space stations, as this requirement is clearly embodied in clause (a).

¹⁶ *Id.* at ¶ 92.

¹⁷ *Id.* at ¶ 51.